

ADMINISTRATIVE EXPUNGEMENT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill modifies the treatment of agency records, including providing for the administrative expungement of agency records under certain circumstances.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that agency records may be classified as protected under certain circumstances;
- ▶ provides that an individual may apply for administrative expungement of records related to disciplinary action previously taken by an agency against the individual under certain circumstances, including that the individual:
 - has had no additional disciplinary action for a certain period of time; and
 - has fully complied with agency requirements regarding previous disciplinary action;
- ▶ describes the application and fee requirements for seeking the administrative expungement of agency records related to action taken by the agency;
- ▶ provides that records expunged under this legislation may still be used internally by the agency and shared with law enforcement, with the courts, and as directed by court order; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-2-305 (Effective 07/01/15), as last amended by Laws of Utah 2015, Chapters 147,

33 283, and 411

34 **63G-4-102**, as last amended by Laws of Utah 2015, Chapter 441

35 ENACTS:

36 **63G-4-701**, Utah Code Annotated 1953

37 **63G-4-702**, Utah Code Annotated 1953

38 **63G-4-703**, Utah Code Annotated 1953

39

40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **63G-2-305 (Effective 07/01/15)** is amended to read:

42 **63G-2-305 (Effective 07/01/15). Protected records.**

43 The following records are protected if properly classified by a governmental entity:

44 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
45 has provided the governmental entity with the information specified in Section 63G-2-309;

46 (2) commercial information or nonindividual financial information obtained from a
47 person if:

48 (a) disclosure of the information could reasonably be expected to result in unfair
49 competitive injury to the person submitting the information or would impair the ability of the
50 governmental entity to obtain necessary information in the future;

51 (b) the person submitting the information has a greater interest in prohibiting access
52 than the public in obtaining access; and

53 (c) the person submitting the information has provided the governmental entity with
54 the information specified in Section 63G-2-309;

55 (3) commercial or financial information acquired or prepared by a governmental entity
56 to the extent that disclosure would lead to financial speculations in currencies, securities, or
57 commodities that will interfere with a planned transaction by the governmental entity or cause
58 substantial financial injury to the governmental entity or state economy;

59 (4) records, the disclosure of which could cause commercial injury to, or confer a
60 competitive advantage upon a potential or actual competitor of, a commercial project entity as
61 defined in Subsection 11-13-103(4);

62 (5) test questions and answers to be used in future license, certification, registration,
63 employment, or academic examinations;

64 (6) records, the disclosure of which would impair governmental procurement
65 proceedings or give an unfair advantage to any person proposing to enter into a contract or
66 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
67 Subsection (6) does not restrict the right of a person to have access to, after the contract or
68 grant has been awarded and signed by all parties, a bid, proposal, application, or other
69 information submitted to or by a governmental entity in response to:

- 70 (a) an invitation for bids;
- 71 (b) a request for proposals;
- 72 (c) a request for quotes;
- 73 (d) a grant; or
- 74 (e) other similar document;

75 (7) information submitted to or by a governmental entity in response to a request for
76 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict
77 the right of a person to have access to the information, after:

78 (a) a contract directly relating to the subject of the request for information has been
79 awarded and signed by all parties; or

80 (b) (i) a final determination is made not to enter into a contract that relates to the
81 subject of the request for information; and

82 (ii) at least two years have passed after the day on which the request for information is
83 issued;

84 (8) records that would identify real property or the appraisal or estimated value of real
85 or personal property, including intellectual property, under consideration for public acquisition
86 before any rights to the property are acquired unless:

87 (a) public interest in obtaining access to the information is greater than or equal to the
88 governmental entity's need to acquire the property on the best terms possible;

89 (b) the information has already been disclosed to persons not employed by or under a
90 duty of confidentiality to the entity;

91 (c) in the case of records that would identify property, potential sellers of the described
92 property have already learned of the governmental entity's plans to acquire the property;

93 (d) in the case of records that would identify the appraisal or estimated value of
94 property, the potential sellers have already learned of the governmental entity's estimated value

95 of the property; or

96 (e) the property under consideration for public acquisition is a single family residence
97 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
98 the property as required under Section 78B-6-505;

99 (9) records prepared in contemplation of sale, exchange, lease, rental, or other
100 compensated transaction of real or personal property including intellectual property, which, if
101 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
102 of the subject property, unless:

103 (a) the public interest in access is greater than or equal to the interests in restricting
104 access, including the governmental entity's interest in maximizing the financial benefit of the
105 transaction; or

106 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
107 the value of the subject property have already been disclosed to persons not employed by or
108 under a duty of confidentiality to the entity;

109 (10) records created or maintained for civil, criminal, or administrative enforcement
110 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
111 release of the records:

112 (a) reasonably could be expected to interfere with investigations undertaken for
113 enforcement, discipline, licensing, certification, or registration purposes;

114 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
115 proceedings;

116 (c) would create a danger of depriving a person of a right to a fair trial or impartial
117 hearing;

118 (d) reasonably could be expected to disclose the identity of a source who is not
119 generally known outside of government and, in the case of a record compiled in the course of
120 an investigation, disclose information furnished by a source not generally known outside of
121 government if disclosure would compromise the source; or

122 (e) reasonably could be expected to disclose investigative or audit techniques,
123 procedures, policies, or orders not generally known outside of government if disclosure would
124 interfere with enforcement or audit efforts;

125 (11) records the disclosure of which would jeopardize the life or safety of an

126 individual;

127 (12) records the disclosure of which would jeopardize the security of governmental
128 property, governmental programs, or governmental recordkeeping systems from damage, theft,
129 or other appropriation or use contrary to law or public policy;

130 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
131 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
132 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

133 (14) records that, if disclosed, would reveal recommendations made to the Board of
134 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
135 Board of Pardons and Parole, or the Department of Human Services that are based on the
136 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
137 jurisdiction;

138 (15) records and audit workpapers that identify audit, collection, and operational
139 procedures and methods used by the State Tax Commission, if disclosure would interfere with
140 audits or collections;

141 (16) records of a governmental audit agency relating to an ongoing or planned audit
142 until the final audit is released;

143 (17) records that are subject to the attorney client privilege;

144 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
145 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
146 quasi-judicial, or administrative proceeding;

147 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
148 from a member of the Legislature; and

149 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
150 legislative action or policy may not be classified as protected under this section; and

151 (b) (i) an internal communication that is part of the deliberative process in connection
152 with the preparation of legislation between:

153 (A) members of a legislative body;

154 (B) a member of a legislative body and a member of the legislative body's staff; or

155 (C) members of a legislative body's staff; and

156 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of

157 legislative action or policy may not be classified as protected under this section;

158 (20) (a) records in the custody or control of the Office of Legislative Research and

159 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated

160 legislation or contemplated course of action before the legislator has elected to support the

161 legislation or course of action, or made the legislation or course of action public; and

162 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the

163 Office of Legislative Research and General Counsel is a public document unless a legislator

164 asks that the records requesting the legislation be maintained as protected records until such

165 time as the legislator elects to make the legislation or course of action public;

166 (21) research requests from legislators to the Office of Legislative Research and

167 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared

168 in response to these requests;

169 (22) drafts, unless otherwise classified as public;

170 (23) records concerning a governmental entity's strategy about:

171 (a) collective bargaining; or

172 (b) imminent or pending litigation;

173 (24) records of investigations of loss occurrences and analyses of loss occurrences that

174 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the

175 Uninsured Employers' Fund, or similar divisions in other governmental entities;

176 (25) records, other than personnel evaluations, that contain a personal recommendation

177 concerning an individual if disclosure would constitute a clearly unwarranted invasion of

178 personal privacy, or disclosure is not in the public interest;

179 (26) records that reveal the location of historic, prehistoric, paleontological, or

180 biological resources that if known would jeopardize the security of those resources or of

181 valuable historic, scientific, educational, or cultural information;

182 (27) records of independent state agencies if the disclosure of the records would

183 conflict with the fiduciary obligations of the agency;

184 (28) records of an institution within the state system of higher education defined in

185 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,

186 retention decisions, and promotions, which could be properly discussed in a meeting closed in

187 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of

188 the final decisions about tenure, appointments, retention, promotions, or those students
189 admitted, may not be classified as protected under this section;

190 (29) records of the governor's office, including budget recommendations, legislative
191 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
192 policies or contemplated courses of action before the governor has implemented or rejected
193 those policies or courses of action or made them public;

194 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
195 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
196 recommendations in these areas;

197 (31) records provided by the United States or by a government entity outside the state
198 that are given to the governmental entity with a requirement that they be managed as protected
199 records if the providing entity certifies that the record would not be subject to public disclosure
200 if retained by it;

201 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
202 except as provided in Section 52-4-206;

203 (33) records that would reveal the contents of settlement negotiations but not including
204 final settlements or empirical data to the extent that they are not otherwise exempt from
205 disclosure;

206 (34) memoranda prepared by staff and used in the decision-making process by an
207 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
208 other body charged by law with performing a quasi-judicial function;

209 (35) records that would reveal negotiations regarding assistance or incentives offered
210 by or requested from a governmental entity for the purpose of encouraging a person to expand
211 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
212 person or place the governmental entity at a competitive disadvantage, but this section may not
213 be used to restrict access to a record evidencing a final contract;

214 (36) materials to which access must be limited for purposes of securing or maintaining
215 the governmental entity's proprietary protection of intellectual property rights including patents,
216 copyrights, and trade secrets;

217 (37) the name of a donor or a prospective donor to a governmental entity, including an
218 institution within the state system of higher education defined in Section 53B-1-102, and other

219 information concerning the donation that could reasonably be expected to reveal the identity of
220 the donor, provided that:

221 (a) the donor requests anonymity in writing;

222 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
223 classified protected by the governmental entity under this Subsection (37); and

224 (c) except for an institution within the state system of higher education defined in
225 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
226 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
227 over the donor, a member of the donor's immediate family, or any entity owned or controlled
228 by the donor or the donor's immediate family;

229 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
230 73-18-13;

231 (39) a notification of workers' compensation insurance coverage described in Section
232 34A-2-205;

233 (40) (a) the following records of an institution within the state system of higher
234 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
235 or received by or on behalf of faculty, staff, employees, or students of the institution:

236 (i) unpublished lecture notes;

237 (ii) unpublished notes, data, and information:

238 (A) relating to research; and

239 (B) of:

240 (I) the institution within the state system of higher education defined in Section
241 53B-1-102; or

242 (II) a sponsor of sponsored research;

243 (iii) unpublished manuscripts;

244 (iv) creative works in process;

245 (v) scholarly correspondence; and

246 (vi) confidential information contained in research proposals;

247 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
248 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

249 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

250 (41) (a) records in the custody or control of the Office of Legislative Auditor General
251 that would reveal the name of a particular legislator who requests a legislative audit prior to the
252 date that audit is completed and made public; and

253 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
254 Office of the Legislative Auditor General is a public document unless the legislator asks that
255 the records in the custody or control of the Office of Legislative Auditor General that would
256 reveal the name of a particular legislator who requests a legislative audit be maintained as
257 protected records until the audit is completed and made public;

258 (42) records that provide detail as to the location of an explosive, including a map or
259 other document that indicates the location of:

260 (a) a production facility; or

261 (b) a magazine;

262 (43) information:

263 (a) contained in the statewide database of the Division of Aging and Adult Services
264 created by Section 62A-3-311.1; or

265 (b) received or maintained in relation to the Identity Theft Reporting Information
266 System (IRIS) established under Section 67-5-22;

267 (44) information contained in the Management Information System and Licensing
268 Information System described in Title 62A, Chapter 4a, Child and Family Services;

269 (45) information regarding National Guard operations or activities in support of the
270 National Guard's federal mission;

271 (46) records provided by any pawn or secondhand business to a law enforcement
272 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
273 Secondhand Merchandise Transaction Information Act;

274 (47) information regarding food security, risk, and vulnerability assessments performed
275 by the Department of Agriculture and Food;

276 (48) except to the extent that the record is exempt from this chapter pursuant to Section
277 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or
278 prepared or maintained by the Division of Emergency Management, and the disclosure of
279 which would jeopardize:

280 (a) the safety of the general public; or

281 (b) the security of:
282 (i) governmental property;
283 (ii) governmental programs; or
284 (iii) the property of a private person who provides the Division of Emergency
285 Management information;
286 (49) records of the Department of Agriculture and Food that provides for the
287 identification, tracing, or control of livestock diseases, including any program established under
288 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act or Title 4, Chapter 31, Control
289 of Animal Disease;
290 (50) as provided in Section 26-39-501:
291 (a) information or records held by the Department of Health related to a complaint
292 regarding a child care program or residential child care which the department is unable to
293 substantiate; and
294 (b) information or records related to a complaint received by the Department of Health
295 from an anonymous complainant regarding a child care program or residential child care;
296 (51) unless otherwise classified as public under Section 63G-2-301 and except as
297 provided under Section 41-1a-116, an individual's home address, home telephone number, or
298 personal mobile phone number, if:
299 (a) the individual is required to provide the information in order to comply with a law,
300 ordinance, rule, or order of a government entity; and
301 (b) the subject of the record has a reasonable expectation that this information will be
302 kept confidential due to:
303 (i) the nature of the law, ordinance, rule, or order; and
304 (ii) the individual complying with the law, ordinance, rule, or order;
305 (52) the name, home address, work addresses, and telephone numbers of an individual
306 that is engaged in, or that provides goods or services for, medical or scientific research that is:
307 (a) conducted within the state system of higher education, as defined in Section
308 53B-1-102; and
309 (b) conducted using animals;
310 (53) an initial proposal under Title 63N, Chapter 13, Part 2, Government Procurement
311 Private Proposal Program, to the extent not made public by rules made under that chapter;

312 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance
313 Evaluation Commission concerning an individual commissioner's vote on whether or not to
314 recommend that the voters retain a judge;

315 (55) information collected and a report prepared by the Judicial Performance
316 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
317 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
318 the information or report;

319 (56) records contained in the Management Information System created in Section
320 62A-4a-1003;

321 (57) records provided or received by the Public Lands Policy Coordinating Office in
322 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

323 (58) information requested by and provided to the 911 Division under Section
324 63H-7a-302;

325 (59) in accordance with Section 73-10-33:

326 (a) a management plan for a water conveyance facility in the possession of the Division
327 of Water Resources or the Board of Water Resources; or

328 (b) an outline of an emergency response plan in possession of the state or a county or
329 municipality;

330 (60) the following records in the custody or control of the Office of Inspector General
331 of Medicaid Services, created in Section 63A-13-201:

332 (a) records that would disclose information relating to allegations of personal
333 misconduct, gross mismanagement, or illegal activity of a person if the information or
334 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
335 through other documents or evidence, and the records relating to the allegation are not relied
336 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
337 report or final audit report;

338 (b) records and audit workpapers to the extent they would disclose the identity of a
339 person who, during the course of an investigation or audit, communicated the existence of any
340 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
341 regulation adopted under the laws of this state, a political subdivision of the state, or any
342 recognized entity of the United States, if the information was disclosed on the condition that

343 the identity of the person be protected;

344 (c) before the time that an investigation or audit is completed and the final
345 investigation or final audit report is released, records or drafts circulated to a person who is not
346 an employee or head of a governmental entity for the person's response or information;

347 (d) records that would disclose an outline or part of any investigation, audit survey
348 plan, or audit program; or

349 (e) requests for an investigation or audit, if disclosure would risk circumvention of an
350 investigation or audit;

351 (61) records that reveal methods used by the Office of Inspector General of Medicaid
352 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or
353 abuse;

354 (62) information provided to the Department of Health or the Division of Occupational
355 and Professional Licensing under Subsection 58-68-304(3) or (4);

356 (63) a record described in Section 63G-12-210;

357 (64) captured plate data that is obtained through an automatic license plate reader
358 system used by a governmental entity as authorized in Section 41-6a-2003; ~~and~~

359 (65) any record in the custody of the Utah Office for Victims of Crime relating to a
360 victim, including:

361 (a) a victim's application or request for benefits;

362 (b) a victim's receipt or denial of benefits; and

363 (c) any administrative notes or records made or created for the purpose of, or used to,
364 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim
365 Reparations Fund[-]; ~~and~~

366 (66) records created or maintained for an investigation of an individual, if the records
367 were created or maintained as the result of a complaint and the governmental entity determines
368 the investigated individual has not committed a violation.

369 Section 2. Section **63G-4-102** is amended to read:

370 **63G-4-102. Scope and applicability of chapter.**

371 (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute
372 superseding provisions of this chapter by explicit reference to this chapter, the provisions of
373 this chapter apply to every agency of the state and govern:

374 (a) state agency action that determines the legal rights, duties, privileges, immunities,
375 or other legal interests of an identifiable person, including agency action to grant, deny, revoke,
376 suspend, modify, annul, withdraw, or amend an authority, right, or license; and

377 (b) judicial review of the action.

378 (2) This chapter does not govern:

379 (a) the procedure for making agency rules, or judicial review of the procedure or rules;

380 (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to
381 waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the
382 issuance of a tax assessment, except that this chapter governs an agency action commenced by
383 a taxpayer or by another person authorized by law to contest the validity or correctness of the
384 action;

385 (c) state agency action relating to extradition, to the granting of a pardon or parole, a
386 commutation or termination of a sentence, or to the rescission, termination, or revocation of
387 parole or probation, to the discipline of, resolution of a grievance of, supervision of,
388 confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah
389 State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction
390 of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or
391 judicial review of the action;

392 (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a
393 student or teacher in a school or educational institution, or judicial review of the action;

394 (e) an application for employment and internal personnel action within an agency
395 concerning its own employees, or judicial review of the action;

396 (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah
397 Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that
398 this chapter governs an agency action commenced by the employer, licensee, or other person
399 authorized by law to contest the validity or correctness of the citation or assessment;

400 (g) state agency action relating to management of state funds, the management and
401 disposal of school and institutional trust land assets, and contracts for the purchase or sale of
402 products, real property, supplies, goods, or services by or for the state, or by or for an agency of
403 the state, except as provided in those contracts, or judicial review of the action;

404 (h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of

405 Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution
406 by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or
407 Holding Companies, and Title 63G, Chapter 7, Governmental Immunity Act of Utah, or
408 judicial review of the action;

409 (i) the initial determination of a person's eligibility for unemployment benefits, the
410 initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers'
411 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial
412 determination of a person's unemployment tax liability;

413 (j) state agency action relating to the distribution or award of a monetary grant to or
414 between governmental units, or for research, development, or the arts, or judicial review of the
415 action;

416 (k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah
417 Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19,
418 Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,
419 Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act,
420 Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used
421 Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except
422 that this chapter governs an agency action commenced by a person authorized by law to contest
423 the validity or correctness of the notice or order;

424 (l) state agency action, to the extent required by federal statute or regulation, to be
425 conducted according to federal procedures;

426 (m) the initial determination of a person's eligibility for government or public
427 assistance benefits;

428 (n) state agency action relating to wildlife licenses, permits, tags, and certificates of
429 registration;

430 (o) a license for use of state recreational facilities;

431 (p) state agency action under Title 63G, Chapter 2, Government Records Access and
432 Management Act, except as provided in ~~[Section]~~ Sections 63G-2-603 and 63G-4-703;

433 (q) state agency action relating to the collection of water commissioner fees and
434 delinquency penalties, or judicial review of the action;

435 (r) state agency action relating to the installation, maintenance, and repair of headgates,

436 caps, valves, or other water controlling works and weirs, flumes, meters, or other water
437 measuring devices, or judicial review of the action;

438 (s) the issuance and enforcement of an initial order under Section 73-2-25;

439 (t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and

440 (ii) an action taken by the Division of Securities under a hearing conducted under
441 Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange
442 of securities described in Subsection 61-1-11.1(1); and

443 (u) state agency action relating to water well driller licenses, water well drilling
444 permits, water well driller registration, or water well drilling construction standards, or judicial
445 review of the action.

446 (3) This chapter does not affect a legal remedy otherwise available to:

447 (a) compel an agency to take action; or

448 (b) challenge an agency's rule.

449 (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative
450 proceeding, or the presiding officer during an adjudicative proceeding from:

451 (a) requesting or ordering a conference with parties and interested persons to:

452 (i) encourage settlement;

453 (ii) clarify the issues;

454 (iii) simplify the evidence;

455 (iv) facilitate discovery; or

456 (v) expedite the proceeding; or

457 (b) granting a timely motion to dismiss or for summary judgment if the requirements of
458 Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party,
459 except to the extent that the requirements of those rules are modified by this chapter.

460 (5) (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by
461 this chapter, except as explicitly provided in that section.

462 (b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is
463 governed by this chapter.

464 (6) This chapter does not preclude an agency from enacting a rule affecting or
465 governing an adjudicative proceeding or from following the rule, if the rule is enacted
466 according to the procedures outlined in Title 63G, Chapter 3, Utah Administrative Rulemaking

467 Act, and if the rule conforms to the requirements of this chapter.

468 (7) (a) If the attorney general issues a written determination that a provision of this
469 chapter would result in the denial of funds or services to an agency of the state from the federal
470 government, the applicability of the provision to that agency shall be suspended to the extent
471 necessary to prevent the denial.

472 (b) The attorney general shall report the suspension to the Legislature at its next
473 session.

474 (8) Nothing in this chapter may be interpreted to provide an independent basis for
475 jurisdiction to review final agency action.

476 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good
477 cause shown, from lengthening or shortening a time period prescribed in this chapter, except
478 the time period established for judicial review.

479 (10) Notwithstanding any other provision of this section, this chapter does not apply to
480 a special adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent
481 expressly provided in Section 19-1-301.5.

482 Section 3. Section **63G-4-701** is enacted to read:

483 **Part 7. Expungement of Administrative Disciplinary Action**

484 **63G-4-701. Title -- Relationship to Utah Expungement Act.**

485 (1) This part is known as "Expungement of Administrative Disciplinary Action."

486 (2) The provisions of this part do not affect or supercede the expungement of a record
487 under Title 77, Chapter 40, Utah Expungement Act.

488 (3) The provisions of this part only apply to a state agency that makes records
489 regarding disciplinary action against an eligible petitioner available to the public.

490 Section 4. Section **63G-4-702** is enacted to read:

491 **63G-4-702. Definitions.**

492 As used in this part:

493 (1) "Administrative expungement" or "expunge" means that a state agency no longer
494 makes a qualifying record available to the public, including through an agency controlled
495 website or other electronic means.

496 (2) (a) "Disciplinary action" means, subject to the limitations described in Section
497 63G-4-102, state agency action against the interest of an individual that affects a legal right,

498 duty, privilege, immunity, or other legal interest of an individual, including agency action to
499 deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license.

500 (b) "Disciplinary action" does not include an investigation, detention, or conviction by
501 law enforcement or a court.

502 (3) "Eligible petitioner" means an individual who was previously the subject of
503 disciplinary action by a state agency but who has:

504 (a) not been convicted of a crime for behavior related to the disciplinary action, unless
505 that criminal conviction has been expunged under Title 77, Chapter 40, Utah Expungement
506 Act;

507 (b) not been the subject of disciplinary action or a criminal conviction during the
508 preceding three years;

509 (c) at least two years before the date of the application, fully complied with agency
510 requirements regarding previous disciplinary action; and

511 (d) not previously obtained more than one administrative expungement under this part.

512 (4) (a) "Qualifying record" means a record of a state agency that the agency makes
513 available to the public, including through an agency controlled website or other electronic
514 means, regarding disciplinary action that was a final agency action at least three years before an
515 eligible petitioner applies to the agency for expungement of the record under this part.

516 (b) "Qualifying record" does not include a recording, written minutes, or any other
517 record created in compliance with Title 52, Chapter 4, Open and Public Meetings Act.

518 Section 5. Section **63G-4-703** is enacted to read:

519 **63G-4-703. Expungement of disciplinary action.**

520 (1) Notwithstanding any conflicting provisions of Title 63G, Chapter 2, Government
521 Records Access and Management Act, and except as provided in Subsection (2), within 60
522 days after the day on which an agency receives an application for administrative expungement
523 from an eligible petitioner, the agency shall expunge the qualifying record of the eligible
524 petitioner if:

525 (a) the petitioner applies to the agency for administrative expungement in a form
526 established by agency rule in accordance with Title 63G, Chapter 3, Utah Administrative
527 Rulemaking Act; and

528 (b) the petitioner pays an application fee determined by the agency under Section

529 63J-1-504.

530 (2) Within 60 days after the day on which an agency receives an application for
531 administrative expungement, the agency head, or the agency head's designee, may deny the
532 application if:

533 (a) the petitioner filing the application is not an eligible petitioner;

534 (b) the record identified for administrative expungement is not a qualifying record;

535 (c) the petitioner provides false information on the application;

536 (d) the record for which administrative expungement is sought relates to criminal
537 conduct that resulted in a conviction that has not been expunged in accordance with Title 77,
538 Chapter 40, Utah Expungement Act;

539 (e) the agency head, or the agency head's designee, after balancing the public's interest
540 against the petitioner's right to privacy, determines that the risk to the public that would result
541 from administrative expungement outweighs the petitioner's privacy interest; or

542 (f) the agency head, or the agency head's designee, determines that the petitioner's
543 behavior was of such a nature that the passage of additional time is required before
544 administrative expungement is warranted.

545 (3) If the agency head, or the agency head's designee, denies an application for
546 administrative expungement under Subsection (2), the agency shall provide a written
547 explanation of the denial to the petitioner.

548 (4) If the agency does not provide a written explanation of a denial or otherwise
549 respond to a petitioner within 60 days after the day on which the agency receives an application
550 for administrative expungement, the agency shall expunge the qualifying record of an eligible
551 petitioner.

552 (5) An eligible petitioner whose application for administrative expungement is denied
553 as described in Subsection (2) may seek judicial review of the decision in accordance with
554 Section 63G-4-401.

555 (6) Notwithstanding the provisions of this part, a record expunged under this part may
556 be:

557 (a) used by the agency in any manner consistent with agency procedures, if the records
558 are not made available to the public;

559 (b) shared by the agency with law enforcement or a court;

560 (c) shared by the agency with another state agency, if that agency agrees to not make
561 the record available to the public; and

562 (d) distributed by the agency as directed by court order.

563 (7) Within three years after the administrative expungement of a record under this part,
564 the agency head, or the agency head's designee, may rescind the administrative expungement of
565 an expunged record if:

566 (a) an additional and final record of disciplinary action is entered against the eligible
567 petitioner; or

568 (b) the agency determines that material information provided in the petitioner's
569 application for administrative expungement was false.

570 (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a
571 state agency may establish rules for the purpose of administering this section, including rules:

572 (a) establishing standards upon which to deny or rescind an administrative
573 expungement under this part; and

574 (b) to notify and accept comments from any individual affected by the behavior that
575 was the basis for the disciplinary action that is the subject of an administrative expungement
576 application under this part.